

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI STATE DEPARTMENT
OF PUBLIC SAFETY,

Petitioner,

vs.

ROBERT J. BRANDENBERG,

Respondent.

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No. 14-0040 PO

DECISION

Robert J. Brandenburg is subject to discipline because he committed a criminal offense while on active duty that involved reckless disregard for the safety of a person.

Procedure

On January 13, 2014, the Director of the Department of Public Safety (“the Director”) filed a complaint seeking to discipline Brandenburg. On January 21, 2014, we served Brandenburg with a copy of the complaint and our notice of complaint/notice of hearing by certified mail. On March 21, 2014, the parties filed a joint motion for consent order. We may decide this case on the stipulated facts.¹

¹ 1 CSR 15-3.440(3). All references to “CSR” are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

Brandenberg admitted facts and that those facts authorize discipline. But statutes and case law instruct us that we must “separately and independently” determine whether such facts constitute cause for discipline.² Therefore, we independently assess whether the facts admitted allow discipline under the law cited.

Findings of Fact

1. Brandenberg is licensed as a peace officer by the Director. His license is current and active and was so at all relevant times.

2. On January 3, 2013, Brandenburg committed the crime of Assault-3rd Degree, a class A or C misdemeanor, when he, while acting in his capacity as a peace officer on active duty, without warning or provocation, kicked a suspect after an arrest had been made and while the suspect was in handcuffs and in the custody of two or three other officers, in violation of § 565.070.³

Conclusions of Law

We have jurisdiction over this case.⁴ The Director has the burden of proving by a preponderance of the credible evidence that Brandenburg has committed an act for which the law allows discipline.⁵ The Director’s complaint alleges, and the parties agree, there is cause for discipline under § 590.080:

1. The director shall have cause to discipline any peace officer licensee who:

(2) Has committed any criminal offense, whether or not a criminal charge has been filed;

² *Kennedy v. Missouri Real Estate Comm’n*, 762 S.W.2d 454, 456-57 (Mo. App., E.D. 1988).

³ RSMo 2000. Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

⁴ Section 621.045.

⁵ *Missouri Real Estate Comm’n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

(3) Has committed any act while on active duty or under color of law that involves moral turpitude or a reckless disregard for the safety of the public or any person[.]

The Director argues that Brandenburg committed the criminal offense of Assault – 3rd Degree, a class A or C misdemeanor, in violation of § 565.070:

1. A person commits the crime of assault in the third degree if:

(1) The person attempts to cause or recklessly causes physical injury to another person; or

(3) The person purposely places another person in apprehension of immediate physical injury; or

(5) The person knowingly causes physical contact with another person knowing the other person will regard the contact as offensive or provocative[.]

2. Except as provided in subsections 3 and 4 of this section, assault in the third degree is a class A misdemeanor.

3. A person who violates the provisions of subdivision (3) or (5) of subsection 1 of this section is guilty of a class C misdemeanor[.]

While on active duty as a peace officer, Brandenburg knowingly kicked a suspect in his custody, knowing the suspect would regard the contact as offensive or provocative. He committed the crime of third degree assault. Because Brandenburg's actions were intended to inflict harm on a person in his custody, we conclude he acted with reckless disregard for the safety of the suspect. We find Brandenburg is subject to discipline under § 590.080.1(2) and (3).

Brandenburg did not waive his right to a hearing or proceeding before the Director. With this decision, the parties may proceed to that hearing.

Summary

Brandenberg is subject to discipline under § 590.080.1(2) and (3). We cancel the hearing.

SO ORDERED on July 22, 2014.

\s\ Mary E. Nelson
MARY E. NELSON
Commissioner